

REMARKS

This responds to the Office Action dated July 31, 2006.

Claims 1, 17, 28, and 36 are amended, claims 25-27 and 29-35 are canceled, and no claims are added; as a result, claims 1-24, 28, and 36-46 remain pending in this application.

Claims 1, 17, 28, and 36 are amended to more clearly define the claimed subject matter. Support for the amendment appears in various portions of the specification, including, for example, page 3, lines 1-11; page 27, lines 2-27; and page 28, line 18 to page 29, line 1.

§103 Rejection of the Claims

Claims 1-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraus et al. (U.S. Patent No. 6,804,559). Notwithstanding the amendment of claims 1, 17, 28, and 36, Applicant respectfully traverses the rejection and submits that the claims are in condition for allowance.

Applicant is unable to find, in the proposed combination of Kraus and the knowledge of one of skill in the art, a teaching or suggestion wherein a time of the duty cycle is determined based on a signal received by the near field antenna, as recited in amended claim 1. Kraus, on the other hand, refers to “a telemetry device . . . characterized in that separate energy storage devices are provided for the separate transmitting and receiving devices” (column 1, lines 40-43). Accordingly, it appears that Kraus is silent as to the claimed subject matter.

The Office Action asserts that “it would have been obvious to inductively couple the close-range antenna 47 because inductive field antennae are easy to manufacture and inexpensive and offer limited field strength.” The Office Action also asserts that “inductive field antenna are generally available to one of ordinary skill in the art and comprise simple elements that make them easy to manufacture.” Applicant traverses the assertions and, regardless of the purported ease of manufacturing, submits that such arguments fall short of meeting the burden of establishing obviousness. In particular, the record does not appear to include findings, or objective evidence on which the findings are based, along with reasoning in support of the conclusion reached. Indeed, rather than teaching or suggesting inductive telemetry, Kraus refers

variously to a “mobile radio device,” and a “mobile radio network.” It appears that the Examiner has set forth conclusory statements based on impermissible hindsight.

As to amended claim 17, Applicant respectfully traverses the rejection. For example, Applicant is unable to find, in the proposed combination, a disclosure or suggestion of configuring at least one wireless transmitter to operate according to a duty cycle and programming the device to select one or more of the plurality of wireless transmitters for transmitting an outbound signal based on an inbound signal received using the near field receiver, and to determine a time of the duty cycle based on the inbound signal, as recited in the claim.

Furthermore, the Office Action asserts that Kraus appears to “meet the claim language limitations where matching logic unit 50 allows the long range telemetry device to be operated at substantially the same effective data rate as the close-range telemetry device.” Applicant is unclear as to importance of matching data rates as described in the Office Action. Nevertheless, the Office Action assertion regarding Kraus’s “matching logic unit 50” appears unsupported by the record. Applicant is unable to find, in Kraus, a description consistent with the Examiner’s interpretation. Applicant requests clarification or withdrawal of the rejection.

The Office Action asserts that “the examiner is interpreting the adaptation of the modulation programming for a respective telemetry to be met using matching logic unit 50 connected to the telemetry unit 45.” Applicant is unclear as to how this assertion, even if true, renders claims 17-20, 23, 24, and 28 obvious. Neither independent claim 17 nor the recited dependent claims 18-20, 23, 24, and 28 includes such language. In addition, the Office Action does not clearly identify a motivation or a suggestion to support the proposed combination. Applicant requests clarification or withdrawal of the rejection.

As to amended claim 36, Applicant is unable to find, in the proposed combination, a teaching or suggestion of receiving a first wireless signal from a near field transmission source and upon receiving the first wireless signal, opening a channel to communicate using a wireless far field link, as recited in the claim. In addition, the Office Action asserts, without support, that “one of ordinary skill in the art would have found it obvious to store data in memory in the implanted device and operate the device based on the memory because the pacemaker would not be proximate to a programmable source for extended periods of time when the patient is mobile.”

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

Serial Number: 10/025,183

Filing Date: December 19, 2001

Title: AN IMPLANTABLE MEDICAL DEVICE WITH TWO OR MORE TELEMETRY SYSTEMS

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Applicant requests clarification and citation to an authority of record. Applicant is unclear as to how such an assertion, even if true, renders claim 36 obvious. Withdrawal of the rejection of claim 36 is respectfully requested.

As to independent claim 41, Applicant submits that the record does not appear to teach or suggest all recited elements. For example, Applicant is unable to find a teaching or suggestion of powering a far field receiver of the device according to a duty cycle and powering a far field transmitter of the device after having received a far field key signal using the far field receiver during a time when the far field receiver is powered, as recited in the claim. The Office Action states “one of ordinary skill in the art would have found it obvious to power the far field antenna 49 after receiving a far field key signal because starting a test requires similar antenna initiation as powering a transmitter.”

Applicant respectfully submits that the Office Action discussion regarding “starting a test” does not appear to meet the instant claim language. Furthermore, the Office Action assertion does not provide a basis or reasoning in support of the requisite motivation or suggestion for modifying or combining as proposed. In addition, such a statement does not cure the shortcomings of the rejection as to teaching or suggesting all recited elements.

Reconsideration and allowance is respectfully requested.

As to dependent claims 2-16, 18-24, 28, 37-40, and 42-46, each recites additional elements beyond that of the independent claims from which each depends. It is believed that the independent claims are in condition for allowance, and accordingly, Applicant respectfully submits that the dependent claims are also in condition for allowance. Furthermore, as to dependent claims 2, 8-12, 14-16, 22, 38-40, 42, and 46, Applicant finds no detailed action describing the factual basis for the rejection. Applicant respectfully submits that the pending claims are in condition for allowance and notification to that effect is respectfully requested.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any

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reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6911 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date January 31, 2007

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 31 day of January 2007.

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